

## **Topsfield Planning Board**

February 5, 2013

Chairman Morrison called the meeting to order at 7:30 PM at the Town Library. Board members present were Martha Morrison, Janice Ablon, Steven Hall and Ian De Buy Wenniger. Roberta Knight, Community Development Coordinator was also present.

**Visitors:** Selectman Dick Gandt; Michael O'Hara, David Ankeles, David Moniz, Karen Moniz, Kindra Clineff, Heidi Fox, Andy Fox

**Minutes:** Member Steven Hall made the motion to approve the minutes of January 15, 2013 as written; seconded by Clerk Janice Ablon; so voted 3-0.

**Hickory Beech Subdivision Re: Drainage & Infrastructure:** Chairman Morrison initiated a discussion relative to the issues referenced in the letter from the Conservation Administrator Lana Spillman for the Conservation Commission in regard to infrastructure and drainage impacting and located within three Wetland Resource areas of the subdivision. The Commission has issued Orders of Conditions for the site and has requested that the Planning Board coordinate with the Conservation Commission on the matter and be copied on relevant letters and inspections reports related to drainage/stormwater management and other activities that may have an impact on Wetland Resource Areas. The members agreed that the boards should share information concerning issues at the site.

The second item concerns a memo from Ms. Spillman to Building Inspector Glenn Clohecy relative to the building permit signoff request for 11 Hickory Lane (Lot 13). The submitted plan is deficient in that it did not show the Bylaw Intermittent Stream on the Open Space Parcel C and Lot 13 as well as the associated 100-foot Bylaw Buffer Zone extending onto Lot 13. Ms. Knight noted that the builder cannot move forward with the building permit application until the conservation issues are addressed.

**2013 Zoning Amendments:** Chairman Morrison initiated the discussion concerning the 2013 zoning amendments for town meeting action. Ms. Morrison noted that Town Counsel Kopelman & Paige had informed her that the state rules and regulations for medical marijuana treatment centers would not be available by May 1<sup>st</sup>. Town Meeting is scheduled for May 8<sup>th</sup>. Therefore, the Board would be addressing the zoning issue for medical marijuana without state direction. Ms. Morrison did note that Town Counsel Patricia Cantor believed that the Board was moving in the right direction relative to the zoning issue for medical marijuana treatment centers tying the use to health services. It would be the responsibility of an accredited hospital or an affiliated medical center to supervise and police the operation of medical marijuana treatment centers under the administration of medical professionals. Licenses and accreditation would be on the line for these facilities.

At this time the Board members reviewed and discussed Draft 1 of proposed zoning amendments which was developed based on previous discussions and recommendations from Town Counsel. The members had a lengthy and thorough discussion of the issues. It was the consensus of the Board to limit medical marijuana treatment centers to hospitals and medical clinics which must be by definition affiliated with a hospital organization. The Board also revised the definition for medical clinics and incorporated said use within the Table of Uses. The Board agreed on the definition as proposed for medical marijuana treatment centers which would be the same definition used in the state regulating statute. In summary, a medical clinic must be affiliated with a hospital; treatment must be by several physicians and include a staff. A medical marijuana treatment center must be located within the same building and on the same premises as a hospital or medical clinic. Further, the Board revised the definition for pharmacy. By definition a pharmacy may not sell retail marijuana products etc. unless it is located within the same building and on the same premises as a hospital and is part of a medical marijuana treatment center. It was noted in the discussion that presently there is neither a hospital nor a medical clinic located within the Town boundaries.

Relative to the Table of Uses, the Board added medical clinic to the Table. Hospitals are allowed in two residential districts (because of the availability of large parcels of land) and three of the four business districts, and medical clinics in only the four business districts. Both hospitals and medical centers would require special permits. Medical marijuana treatment centers have also been included in the Table with the requirement for a special permit in the four business districts. Said centers would not be allowed in residential districts. So this would mean that a medical marijuana treatment center, given the requirement that it be in a hospital or a medical clinic could actually be establish by special permit only in a hospital in three of the business districts or a medical clinic in four of the business districts. The Board then discussed the issue that if anyone wished to build a hospital or medical clinic with a medical marijuana treatment center, the parent organization would have to apply for two separate special permits. The Board requested that Town Counsel review this issue.

Member Ian De Buy Wenniger raised an alternative. Could the Board simply state that medical marijuana treatment centers are allowed in Topsfield only to the extent mandated by the rules and regulations of the state? This alternative would also be forwarded to Town Counsel for a legal opinion.

The Board then discussed the need to inform the public of its zoning efforts to regulate medical marijuana treatment centers within Topsfield. It was the consensus of the Board to hold a public information meeting during the March 5<sup>th</sup> meeting prior to the public hearing scheduled for March 19<sup>th</sup>. Ms. Knight was directed to place a press release on cable and the Town website.

**51Fox Run Road:** At 8:05PM, Chairman Morrison called to order the public hearing to consider the application of Federal Construction & Excavating LLC for 51 Fox Run Road pursuant to the Topsfield General By-laws, Chapter 51, Storm Water Management And

Erosion Control for a stormwater management permit for the construction of a single family dwelling, septic system and driveway.

Michael O'Hara, the principal, reviewed the stormwater plans with the Board. Mr. O'Hara informed the Board that due to the large area to be excavated and the steep slopes, no more than a 5000 sq. ft. area would be graded at a time with erosion controls in place and loam and seed completed before moving on to the next area of development.

The proposed work scheduled is as follows:

- Driveway (4,000 sq. ft.)
- Foundation (4,000 sq. ft.)
- Septic System (4,000 sq. ft.)

Each area would be sealed with hay at night.

Mr. O'Hara noted that there would be a modification to the plan. The modification would be a straight driveway with a four foot retaining wall.

Chairman Morrison noted that Stormwater Coordinator David Bond had contacted the Board and recommended an independent peer review for the revised project.

At this time, abutter David Moniz noted that currently there is a problem of water flow along the wall to his property at 48 Fox Run and also the abutting Magnant property at 47 Fox Run. The water overflow needs to be addressed. With every large storm there is water in his basement. Mr. Moniz stated that he did not want the situation to get worse with the development of this new lot. Ms. Clineff noted her concern relative to the back area of the lot and run-off in the River Road area.

It was determined that the public hearing would need to be continued and Ms. Knight would draft a Request for Proposals for a peer review of the modified plan. New engineering documents with calculations would be required. The Board discussed possible engineering firms for the peer review noting its concern relative to the soils on the lot.

Clerk Janice Ablon made the motion to continue the meeting to March 5, 2013; seconded by Member Steven Hall; so voted 4-0.

**Wildes Road Re Appeals Process:** At this time, Chairman Morrison noted that Heidi and Andy of 31 Wildes Road were present. Ms. Morrison informed them that the Board had sought a legal opinion from Town Counsel concerning the 60 day limited appeal for the scenic road permit pursuant to M.G. L. Chapter 249, Section 4. She informed Heidi and Andy Fox that Town Counsel has opined that the Planning Board may not confer jurisdiction on a court relative to the question of the appealability of a decision. Once a permit has been issued the work may commence immediately. A court order would need

to be obtained to stay the Board's order. Further, the Board was informed that in the case of the scenic road statute and shade tree statute regulating the cutting and removal of trees and removal of stonewalls neither statute provides for a right of appeal from a Planning board determination regarding trees or stone walls protected by scenic road designation there is no case law on the subject. Since the local Planning Board cannot assign jurisdiction to a court, the rule relative to appeals must go. The Board would address the matter at its next meeting. Ms. Morrison thanked the Fox's for their concerns and bringing this issue to the forefront such that the Planning Board may correct an erroneous action.

Ms. Morrison also noted that she would contact David Bond as to the status of the planting plan by National Grid for Wildes Road.

The meeting was adjourned at 9:36 PM.

Respectfully submitted,

Roberta M. Knight  
Community Development Coordinator